of the State of Sarawak the Government of Sarawak may inherit certain rights, liabilities and obligations of Her Majesty. The point in the instant case is that no rights, liabilities or obligations concerning "designation" can arise until a designated officer has been designated as such by a Secretary of State and on this point there is express agreement between the two Governments contained in the Overseas Service Ordinance No. 15 of 1961.

In the event the appeal is dismissed and the cross appeal is allowed. The appellant must pay the costs of the appeal and of the court below.

Ismail Khan and **Gill JJ.** concurred.

Appeal dismissed. Cross-appeal allowed.

LIM WHONG IN v. HOCK CHEONG NEWSPAPER TRANSPORT CO. LTD. & ORS.

[F.C. (Barakbah L.P., Ismail Khan and Ali JJ.) September 19, 1966]

[J.B. — Federal Court Civil Appeal No. X34 of 1966]

Damages — Injury to arm — Pain and suffering as a result of — Refusing amputation — Trend of awards.

This was an appeal against the quantum of general damages awarded to the plaintiff as a result of an accident in which he sustained injury to his left arm. The plaintiff had refused to have his arm amputated and as a result had to undergo a lot of pain and trouble for treatment. According to the medical evidence he could do any work not requiring use of the left arm. He was awarded $15,000 as general damages. It was argued that the damages awarded in this case were not "in line with a discernable trend or pattern of awards in similar cases".

Held: in the circumstances of this case the amount awarded for general damages was reasonable and not out of line with the discernable trend or pattern of awards in similar cases.

"Damages for injuries" include damages for loss of future earnings.

Cases referred to:—

(1) *Phua Tin Hang* v. *Teo Soh Choo* [1964] M.L.J. cx.

(2) *Jag Singh* v. *Toong Fong Omnibus Co.* [1964] M.L.J. 463.

FEDERAL COURT.

Denis Murphy for the appellant.

Morris Edgar for the 1st respondent.

Cur. Adv. Vult.

Barakbah L.P.: The plaintiff claimed damages against the defendants for injury to his left arm as a result of a head-on collision between motor van number M. 8709 and motor-car number SB. 5187. The High Court in Johore Bahru awarded $4,640 as special damages and $15,000 as general damages to the plaintiff who now appeals to this court on the quantum of general damages.

The appellant was being paid $120 per month and employed by the first respondent as a driver of the motor van. At the time of the accident he was a passenger in the said van travelling from Johore Bahru to Pontian and the second respondent was the driver.

According to P.W.1, Mr. William Fung, the appellant had the following injuries:—

(1) Severe and deep abrasions and lacerated wounds invclving the whole of the left arm from the shoulder to the tips of the fingers. There were marked sepsis and necrosis of the tissues.

(2) Fracture of the neck of the left humerus.

(3) Compound fracture of the left radius and ulna.

The doctors appeared to have advised the appellant to have his arm amputated from about the middle of the upper arm but he refused to do this. According to Mr. Fung and Dr. Lee the appellant on leaving hospital on 5th February, 1962, had been treated by a Chinese herbalist. On 12th February, 1962, he went to the General Hospital, Malacca. He remained in the hospital until 30th April, 1962, when he was discharged but continued as an out-patient. On 3rd July, 1962 and 28th August, 1962, he was treated as an out-patient in the General Hospital, Singapore, and on 28th September, 1962, he was re-admitted into a ward for plastic surgery and underwent a series of operations transferring the skin and tissues of the abdomen to the left arm. He was discharged on 30th October, 1962, and on 12th November, 1962, he was re-admitted again for further plastic surgery. He was discharged on 17th November, 1962, and visited the hospital on 26th November, 1962, 7th December, 1962, 18th December, 1962, and 28th December, 1962, as an out-patient. He then returned to Malacca and was seen again in the out-patients' department on 5th February, 1963 and 12th February, 1963, when he was given a certificate for light duties. On 31st May, 1963, he was re-admitted for further plastic surgery and was discharged on 7th June, 1963. He was re-admitted on 21st June, 1963, for replacement of bone loss from the forearm and was discharged on 31st August, 1963. He was re-admitted again on 23rd October, 1963, and remained in hospital until 5th November, 1963, when he was discharged but continued as an out-patient. He was seen as an out-patient on two occasions, namely on 18th November, 1963 and 10th December, 1963. Mr. Fung saw him finally on 14th December, 1963, and on examination of the left shoulder found that there was limitation of movement in the left shoulder joint and flexion was 90° and

abduction 150°. Internal and external rotation was normal. There was a deficiency in the radial aspect of the forearm which was deeply furrowed and scarred indicating loss of bone and muscle. All the fingers and thumb were limited in their range of movement and functions of the hand were confined to movements of the thumb and index finger. The fracture site was solidly united and in excellent alignment. (See medical report Ex. E). From the evidence it appeared that the appellant had a prolonged treatment. If he had agreed to have his hand amputated he would not have had to undergo all this painful treatment.

Mr. Murphy, counsel for the appellant, referred to several authorities which concerned the loss of an arm or a leg. He quoted one case where the arm was not amputated. In *Phua Tin Hang* v. *Teo Soh Choo* [1] the plaintiff who was 19 years of age at the time of the accident suffered several injuries, namely lacerated wound 2½ inches deep which cut all the flexor tendons and nerves of the left forearm, complete ulnar and medial nerve paralysis leaving a claw hand, lacerated wound in the mucous membrane of the mouth with mandible exposed. The effect of the injury was that he was virtually without the use of the left hand with which he could not pick anything up other than some thin piece of paper with his two fingers. For practical purposes he had lost the use of the hand. He has not had a job since the accident although he had tried. He was a food caterer's assistant earning $130 a month. The judge awarded special damages in the sum of $3,100 for loss of earnings and transport to and from the hospital, and general damages $25,000 being made up of $12,500 for loss of future earnings. Counsel for the appellant also referred to the case of *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.* [2] where the Privy Council decided that the award should be "in line with a discernable trend or pattern of awards in reasonably comparable cases."

In his reply Mr. Morris Edgar for the first respondent quoted a passage in the judgment of Lord Morris of Borth-y-Gest in the same case at page 465:—

"It need hardly be emphasised that caution has to be exercised when paying heed to the figures of awards in other cases. This is particularly so where cases are merely noted but not fully reported. It is necessary to ensure that in main essentials the facts of one case bear comparison with the facts of another before any comparison between the awards in the respective cases can fairly or profitably be made. If however it is shown that cases bear a reasonable measure of similarity then it may be possible to find a reflection in them of a general consensus of judicial opinion. This is not to say that damages should be standardised or that there should be any attempt at rigid classification. It is but to recognise that since in a court of law compensation for physical injury can only be assessed and fixed in monetary terms the best that courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion. As far as possible it is desirable that two litigants whose claims correspond should receive similar treatment just as it is desirable that they should both receive fair treatment. Those whom they sue are no less entitled."

In the case before us the appellant still retained his arm. He refused to have it amputated. According to the doctor he was able to do any work not requiring the use of the left arm and he could still wave with his hand as attendants have to do. He had a lot of pain and trouble for treatment but he is better off now with an arm.

In *Phua Tin Hang* v. *Teo Soh Choo, supra,* although the plaintiff suffered severe injury to his left arm he was awarded only $12,500 for loss of amenities, pain and suffering. He was 19 years old at the time of the accident and 21 years at the time of the trial. For loss of future earnings he was awarded $12,500. In the present case the appellant was a much older man, 50 years of age at the time of the accident and 54 at the date of the trial. He had himself to blame for pain and suffering which he had to bear for a prolonged period as he did not consent to have his arm amputated. In the circumstances I consider the amount awarded as reasonable.

Another ground raised by counsel for the appellant was that the learned judge gave damages for injuries only and failed to take into account any loss of future earnings when in his judgment he stated "In my view $15,000 should be ample damages for the injuries on the left arm." Although the learned judge has not expressed himself fully I am of the opinion that the expression "damages for the injuries" includes damages for loss of future earnings.

I would therefore, dismiss the appeal with costs.

Ismail Khan and **Ali JJ.** concurred.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Morris Edgar & Co.*

MOHAMED SIDIN v. PUBLIC PROSECUTOR

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and Chang Min Tat J.) September 20, 1966]

[Ipoh — Federal Court Criminal Appeal No. X18 of 1966]

Emergency — Trial by judge without there being held a preliminary inquiry — Whether regulations are ultra vires the Emergency (Essential Powers) Act, 1964 — Discriminatory legislation — Classification — Constitution of Malaysia, art. 8(1) — Emergency (Essential Powers) Act, 1964 — Emergency (Criminal Trials) Regulations, 1964, regs. 4 and 5.

The appellant had been convicted of offences under the Internal Security Act, 1960. The only ground argued on the appeal was that regulations 4 and 5 of the Emergency (Criminal Trials) Regulations were *ultra vires* the Emergency (Essential Powers) Act, 1964, as the Yang di-Pertuan Agong, had no power under the